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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,696	10/21/2003	Francois Cottard	06028.0028-00	9761
22852	7590	12/06/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/690,696

**Applicant(s)**

COTTARD ET AL.

**Examiner**

Eisa B. Elhilo

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/22/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/22/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/16/2004 has been entered.

#### *Claim Rejections - 35 USC § 103*

2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1) in view of Ochiai et al. (US 5,587,155).

Laurent et al. (US' 431 A1) teaches a hair dyeing composition comprising at least one oxidation dye (see page 1, paragraph, 0019) and cationic poly(vinyl lactam) polymers formed from a) monomers of vinyl lactam and monomers of alkyvinyl lactam monomers, at least one monomer chosen from formulae (Ib) and (IIb) which are similar to the claimed formulae (Ia) and (Ib) as claimed in claims 1-2 and 5-8 (see page 6, paragraphs, 0155-0166 and page 7, paragraphs, 0167-0177), wherein the monomer is a compound having a formula (IVb) which is similar to the claimed formula (III) as claimed in claim 3 (see page 7, paragraphs, 0178-0183), wherein the monomer of formula (IVb) is vinylpyrrolidone as claimed in claim 4 (see page, 7, paragraph, 0184), wherein the composition also comprises additional monomers chosen from cationic and

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nonionic monomers as claimed in claim 9 (see page 7, paragraph, 0185), wherein the composition further, comprises terpolymer having a) monomers (IVb), b) monomer (Ib) and c) monomer (IIb) wherein the monomers are identical to the claimed monomers as claimed in claim 10 (see page 7, paragraphs, 0186 –0187 and paragraphs 0188-0189), wherein the terpolymer comprises by weight, 40 to 95% of monomer (a), 0.25 to 50% of monomer (b) and 0.1 to 55% of monomer (c) as claimed in claim 11 (see page 7, paragraph, 0190), wherein the cationic poly(vinylactams) is vinylpyrrolidone/dimethylamino-propylmethacrylamine/dodecyldimethylmethacrylamidopropylammonium tosylate as claimed in claim 12 (see page 7, paragraph, 0191), wherein the weight-average molecular mass of the cationic poly(vinylactams) ranges from 500 to 20 000 000, 200 000 to 2,000 000 or 400 000 to 800 000 as claimed in claims 13-15 (see page 7, paragraph, 0192), wherein the cationic amphiphilic polymers are presented in the amounts of 0.01 to 3% and 0.02 to 0.5% which overlapped with the claimed ranges as claimed in claims 16-17 (see page 9, paragraph, 0220), wherein the composition comprises at least one oxidation base of para-phenylenediamine in the amount of 0.0005 to 12% which is within the claimed range as claimed in claims 23-26 (see page 10, paragraph, 0266 and page 13, paragraph, 0312), couplers of meta-phenylenediamines in the amount of 0.0001 to 10% which is within the claimed range as claimed in claims 27-29 (see page 13, paragraphs, 0314 and 0315), hydrochlorides and hydrobromides as acid addition salts of oxidation bases as claimed in claim 30-31 (see page 13, paragraph, 0316), direct dyes as claimed in claim 32 (see page 13, paragraph, 0317), additional cationic amphoteric polymers having the formulae (W) and (U) which are identical to the claimed formulae (W) and (U) as claimed in claims 33-35 (see page 17, formulae (W) and (U)), at least one amphoteric polymer is a copolymer comprising as

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monomer at least acrylic acid and dimethyldiallylammonium salt as claimed in claim 36 (see page 27, claim 61), wherein the additional polymers present in the amounts of 0.01 to 10%, 0.05 to 5% and 0.1 to 3% as claimed in claims 37-39 (see page 17, paragraph, 0396), at least one surfactant chosen from cationic, anionic and amphiphilic surfactants and thickeners as claimed in claims 40 and 43 (see page 21, paragraph, 0466), at least one reducing agent in the amount of 0.05 to 3% as claimed in claim 44 (see page 21, paragraph, 0467), at least one oxidizing agent such as hydrogen peroxide in the aqueous solution of 1-40 volumes as claimed in claims 45-48 (see page 21, paragraph, 0469), wherein the dyeing composition has a pH in the range of 6 to 11 which within the claimed range as claimed in claim 49 (see page 21, paragraph, 0471). Laurent et al. (US' 431 A1) also teaches a process for dyeing hair comprising applying to the hair the dyeing composition as described above and wherein the dyeing composition is mixed with the oxidizing composition before the application as claimed in claims 50-52 (see page 22, paragraph, 0477). Laurent et al. (US' 431 A1) further, teaches multi compartment devices for holding the dyeing composition as claimed in claims 53-54 (see page 27, claim 66). Laurent et al. (US' 431).

The disclosure of Laurent et al. (US' 431 A1) as described above, does not teach or disclose fatty acids chosen from C<sub>10</sub>-C<sub>14</sub> fatty acids as claimed.

However, Laurent et al. teaches dyeing composition comprising fatty acids such as oleic acid (see page 22, paragraph, 0493).

Ochiai et al. (US' 155) in analogous art of hair treating formulation, teaches a composition that can be used as hair dyeing composition (see col.7, lines 44-46), and wherein the composition comprises fatty acids having 12-40 carbon atoms such as lauric acid and oleic acid

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(see col. 2, lines 27-35) and wherein these fatty acids are presented in the composition in the amounts of 0.1 to 20% by weight (see col. 3, line 2).

Therefore, in view of teaching of the secondary reference, it would have been obvious to one having ordinary in the art at the time the invention was made to be motivated to modify the dyeing composition of Laurent et al. (US' 431 A1) by replacing the oleic acid with the lauric acid as taught by Ochiai et al. (US' 115) to arrive at the claimed invention. Such a modification would be obvious because Laurent et al. (US' 431 A1) as a primary reference suggests the use of fatty acid such as oleic acid in the dyeing composition (see page 22, paragraph, 0493). Ochiai et al. (US' 155) as a secondary reference clearly teaches the equivalence of these acids (oleic and lauric) in a hair dyeing formulation (see col. 2, lines 27-35), and, thus, a person having ordinary skill in the art would be motivated to replace the oleic acid in the composition of Laurent with the lauric acid as taught by Ochiai with a reasonable expectation of success to arrive at the claimed invention and would expect such a composition to have similar properties to those claimed in the absent of contrary.

With respect to claims 41-42, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition by optimizing the amounts of the surfactants in the dyeing composition with the reasonable expectation of success, because Laurent et al. teaches a dyeing composition comprising effective amounts of at least one agent conventionally used in oxidation dyeing such as at least one adjuvant including surfactants (see page 21, paragraph, 0466), and, thus, a person of the ordinary skill in the art would be motivated to optimize the amounts of the surfactants in the composition in order to get the

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maximum effective amounts of these surfactants in the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 55-56, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a multi-compartment device comprising three compartments for holding and maintaining the dyeing composition because Laurent et al. clearly teaches a device or kit for dyeing hair comprising at least two compartments (see page 27, claim 66) which implies that more than two compartments may be used to hold and maintain the dyeing composition, and, thus, a person of the ordinary skill in the art would be motivated to use any number of compartments including those claimed and would expect such a device would be suitable for holding the dyeing ingredients as those claimed, absent unexpected results.

***Response to Applicant's Arguments***

3 Applicant's arguments with respect to claims 1-56 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

4 The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (FR 2820032) and (EP 1179 336 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

December 3, 2005